

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4437 of 1999

WITH

SPECIAL CIVIL APPLICATION No 4780 of 1999

WITH

SPECIAL CIVIL APPLICATION No.4869 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
 2. To be referred to the Reporter or not? : YES
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

VIPULKUMAR DHIRUBHAI SOLANKI

Versus

CENTRAL DEGREE ADMISSION COMMITTEE

Appearance:

1. Special Civil Application No. 4437 of 1999
MR IM PANDYA for Petitioner
MR B.Y. Mankad, Asst. Govt. Pleader for Respondent No. 1
MS AMITA M SHAH for Respondent No. 2
MR KH BAXI for interveners.
2. Special Civil ApplicationNo 4780 of 1999
MR IM PANDYA for Petitioner
MR B.Y. Mankad, Asstt. Govt. Pleader for Respondent No. 1
MS AMITA M SHAH for Respondent No. 2
MR KH BAXI for interveners.
3. Special Civil Application No.4869 of 1999
Ms. Sneha Joshi for the petitioner

Mr. B.Y. Mankad, Asstt. Govt. Pleader for
respondent no.1 to 3.

CORAM : MR.JUSTICE M.R.CALLA
Date of decision: 25/08/1999

COMMON ORAL JUDGEMENT

Whereas these three Special Civil Applications involve grievances against or about the Govt. Resolutions dated 5.5.1999 read with amendment dated 22.6.1999, I propose to decide these three petitions by this common judgement and order. In Special Civil Applications No.4437 of 1999 and No.4780 of 1999 while the Central Degree Admission Committee has been made respondent, in Special Civil Application No.4869 of 1999, Secretary, Education Deptt., Govt. of Gujarat and Director of Technical Education Board, Govt. of Gujarat have also been arrayed as respondents nos.2 and 3, all the three petitions have been opposed by the Asstt. Govt. Pleader and in all the three Special Civil Applications, affidavits in reply have been filed under the signatures of M.M. Sheikh, Joint Director of Technical Education in the Directorate of Technical Education at Gandhinagar and whereas all the three petitions have been argued together, this Court does not feel inclined to throw away the two petitions being Special Civil Applications Nos.4437 of 1999 and 4780 of 1999 only on the ground that the State of Gujarat or its functionaries have not been arrayed as respondents and hence proceed to decide the three Special Civil Applications on merits.

SPECIAL CIVIL APPLICATION No.4437 OF 1999

2. The petitioner herein has come with the case that he has been a meritorious student throughout. On 28.4.1998 he applied for admission to MBBS Course and on being admitted he joined the course of MBBS on 25.11.1998 and left the college in February 1999, while he was studying in first term of MBBS. The petitioner had requested for cancellation of his claim for the said course and the Dean of BJ Medical College issued a letter dated 17.5.1999, whereby his claim for first MBBS Course for the year 1998- 99 was cancelled. This year he again applied for his admission to the Engineering/ Pharmacy course on 24.5.1999 - but his candidature for either of these two courses, i.e. either for Engineering or Pharmacy has not been entertained, because as per

Annexure 'D' dated 15.5.1999, on record with the petition, only those candidates are entitled to be considered for the said courses, who have passed 12th Standard Examination in Science stream or equivalent examination in March/ April of the academic year 1998- 99 and October/ November of the academic year 1997- 98; meaning thereby that those who had passed the qualifying examination of 12th Standard prior to October/ November of the academic year 1997- 98 would not be eligible to be considered. The result is that the petitioner who had passed the qualifying examination of higher secondary certificate (10 + 2) pattern in March 1998, i.e. academic year 1997 - 98 with 77.84 % marks in Grade I (Dist.) and 87% marks for the purpose of computing merit in the relevant subjects, is being denied admission.

3. In these circumstances the present petitioner has prayed for quashing and setting aside the policy of the respondents in not considering candidates like him, i.e. those who passed examination of higher secondary before October/ November of the academic year 1997 - 98, through the present Special Civil Application filed in this Court on 23.6.1999.

4. Rule was issued on 24.6.1999 and affidavit in reply dated 15.7.1999 has been filed on behalf of respondent no.1, under the signatures of the Joint Director of Technical Education. Respondent no.1 has taken the stand that admission process for Engineering/ Pharmacy is monitored by the Director, Technical Education through the Central Degree Admission Committee. This Committee is an agency of the State having no powers regarding regulation and rules of admission. It carries out admission process as per relevant rules and regulations of the Education Department. Reference is made to the Resolution dated 5.5.1999 and amendment dated 22.6.1999 thereto. It has been stated in para 5 of the affidavit in reply dated 15th July 1999 that for the academic year 1999 - 2000 the candidates falling in the following categories only are eligible for admission :

- (i) those who passed 12th HSC Science stream examination in March/ April 1999,
- (ii) those who passed the relevant examination in October/ November 1998,
- (iii) those who passed the relevant examination in March/ April 1998- 99 and in October/ Nov. 1997, but did not avail of admission in first year

degree Engg. - Pharmacy and Medical courses and
12th HSCE (Sc.) Diploma Courses.

(A) Thus, those who took admission in the first year degree engineering, first year degree pharmacy and the first year diploma engineering/ pharmacy courses after 12th HSC Science Stream examination and those who took admission in 1st year medical courses last year are not eligible for admission for the academic year 1999- 2000.

5. Contents of the amendment dated 22.6.1999 show that main hurdle against consideration of the petitioner's candidature for admission in Engg/ Pharmacy courses for the year 1999 - 2000 for which he has applied now is that he had availed admission to the Medical course last year, i.e. 1998 - 99 and because he gave up such admission of his own volition he cannot be now considered for admission to any other course, whether engineering or pharmacy. The respondents in support of the Resolution dated 5.5.1999 amended on 22.6.1999 have come up with the reasons for which these decisions have been taken ;

(a) to save wastage of precious and normal seats in the Govt. and grant in aid institutions. Due to increasing trend of candidates who took admission earlier and if permitted to reapply despite the fact that the State afforded them an opportunity by way of centralised admission on the basis of State- wise common merit list, and following the state reservation policy for weaker sections of the society, a large section of fresh candidates to whom the opportunity has yet to be given shall be deprived of their legitimate right to equality.

(b) to save wastage of payment seats due to candidates leaving institutes without completing the relevant courses and void so created being not possible to fill up resulting in depriving freshers to get due opportunity for admission for the first time but also irreparable damage which may be caused to these developing institutes which survive only on the revenues earned through high fees of the payment seats.

6. It has been stated that the candidates standing in the merit have to opt a discipline and place as available at the time of admission without any restraint and those who have lower merit have to go to distant

places, for degree/ diploma/ discipline with inadequate hostel facilities with varying degree of expenditure. With the growing number of institutes the tendency to take chance next year with the loss of year is increasing by creating lot of problems and possibility of wastage of large number of seats and raising serious problem of survival of the govt. grant in aid and self financing institutes in particular, has necessitated to amend the rules of admission and revise criteria of eligibility.

7. In para 8 of the affidavit in reply, a reference has been made to a decision rendered by the Division Bench of this Court in Special Civil Application No.2823 of 1982 with other allied matters and certain observations in paras 7 and 8 of that judgment have been reproduced. These contents are quoted as under for ready reference.

From para 7 of the aforesaid judgment, it has been quoted in the reply as under :

"If the rule making authority, namely the Govt. intended to make a similar provision in the rule pertaining to admission to the first semester of BE course, there was nothing to stop it from doing so in express terms. If the same rule making body restricts the admission to the students passing the higher secondary certificate examination in March/ April of the current year or October/ Nov. of the preceding year and the exam. of the Central Board of Secondary Education in so far as admission to the First MBBS course and allied courses are concerned, there was nothing to stop it from making a similar provision if that was the intendment insofar as admission to the engineering course is concerned.

From para 8 of the judgement, it has been quoted in the reply as under :

"It is indeed true that as no time limit is prescribed hypothetically, speaking, students who have passed the qualifying examination in the preceding years, the number of years notwithstanding, would be eligible for admission to the engineering course. Technically, it may appear to be so but there is nothing on the record to show that in actual practice it does so happen and even if it does, that cannot be helped because it is for the policy makers to decide

whether or not to eliminate such students from being considered for admission."

It has been submitted that the Division Bench has thus upheld the right of the State Government to make policy decision with regard to change in rules for admission purpose. It has been further submitted that the situation cannot be left to the whims of the candidates and guardians to take admission and leave it at their sweet will.

8. While referring to the case of Shri Ramkrishna Dalmia v. S.R. Tendolkar, AIR 1958 SC 538, it has been submitted that the Government cannot be denied the right to decide as to from what sources the admission will be made, because that is essentially a question of policy. In para 11 of this Affidavit in Reply, it has been stated that when the petitioner sought admission in the last academic year, i.e. 1998- 99, at the time of interview before the committee, he had made an endorsement in his application against engineering/ pharmacy courses as, "not interested in available branches" and opted for medical course at Medical College, Vadodara. Looking to the merit number, engineering and pharmacy branches were also available to the petitioner at Ahmedabad itself at that time. He also had bright and good chances to get admission in engineering/ pharmacy at the place of his residence, i.e. Ahmedabad, but for the reasons best known to the petitioner, he opted for admission in Medical College at Vadodara and took admission in MBBS Course and studied there in the first semester. It has also been stated that from the record of BJ Medical College it is found that he got his admission cancelled by saying that he was not interested in the medical course and he does not want to continue with the MBBS Course. It has further been stated that the students who could not get admission in the previous year because of illness, accident, less than 18 years of age, or who could not get the certificate of creamy layer from the authorities in time will be excluded from Govt Resolution dated 5.5.1999 for admission to March 1999 and October 1998 candidates and looking to the above Govt. Resolution dated 22.6.1999, the petitioner cannot have advantage of this resolution as well, as he does not fall in any of the categories mentioned in the Govt. Resolution. It has been further stated in this Affidavit in Reply that number of applications received under the category identified as 'disqualified' (not eligible for admission) are 3766. These applications are being classified at this moment and in view of the amendment dated 22.6.1999 it is estimated that a fairly large

percentage of candidates who have taken admission last year and seek a change of admission, shall lead to vacancies at Semester III at institutes like colleges at Bhuj, Bhavnagar and of disciplines such as Civil and other diversified disciplines because of readmission to first year. Besides this, it is feared that those who took admission last year shall opt for change from payment seats to free seats creating lot of problems for the survival of the Self Financed Institutes which came into existence under the scheme contemplated by the Supreme Court, if the rules for admission eligibility for the year 1999 - 2000 are given a go bye. It is also stated that the petitioner's case is not the only one but in view of the record number of applications, i.e. 3766, no exception in the case of the petitioner can be made applicable. It has also been stated that the petitioner had selected professional course with due application of mind and had availed the opportunity which was available to him by opting for medical course at that time and the petitioner, therefore, cannot be allowed readmission once again to deprive the candidates waiting in queue for academic year 1999- 2000. It is further stated that the petitioner can apply for diploma courses after SSCE on the basis of 10th SSCE result and after doing diploma course he can avail of admission to Semester III degree courses on 15% seats for diploma holders. Therefore, the petition deserves to be dismissed.

9. It may also be pointed out that respondent no.2, Pathik Sureshchandra Gandhi, was joined a party to this petition by order dated 2.7.1999 passed in Civil Application No.6243 of 1999. This respondent no.2 is a candidate who passed the qualifying examination in science stream in March 1999, obtaining 355 marks out of 450. As against that the petitioner's marks 394 out of 450. Respondent no.2 may not get admission in case the candidature of petitioner and such other candidates are considered and therefore, this respondent has placed reliance on this resolution dated 5.5.1999 and also amendment dated 22.6.1999 thereto. Certain other students raising similar grievance through Shri KH Baxi were also permitted to intervene in the matter.

10. I have heard learned counsel for the petitioner, learned AGP for respondent no.2 and the learned counsel for the interveners and have gone through the pleadings including the affidavit in reply dated 7.7.1999 filed by respondent no.2. The only question which requires consideration in this case is as to whether the candidates who had availed the admission in the previous year and then gave up the course are to be kept out of

the race for admission this year? Basically in such matters, the admissions have to be granted on the basis of merit. The merit cannot be allowed to be a casualty in any case. May be that in a given case a candidate has joined a particular course on the basis of merit and later on he does not find it possible to continue studies for reasons more than one including that of his own sickness or adverse family circumstances and that of chill penury or if he finds that he does not fit in that discipline or that discipline does not suit him, i.e. neither he is fit for that course nor that course is fit for him and having tried himself for that course he genuinely finds that he may try his fate next year in some other discipline, should the doors of other course and discipline be closed for him even though he is much more meritorious as compared to other applicants for such course in the next year is certain a question which demands an answer. If we really want the merit to prevail, the objective answer to such question will be that the doors of such courses cannot be closed on him for ever. There is no doubt that ultimately it is for the authorities which are charged with the powers to frame policy relating to admission and there cannot be any dispute with regard to their powers for that purpose and that in such matters they may amend the rules, but in such cases even if they make such amendments in the rules, the same have to be rational and have to be notified well in advance so that the candidates may take their decision accordingly. In the facts of this case it is clear that the petitioner had opted out from the course in engineering and pharmacy in the previous year by saying that he was not interested and instead he opted for the course of MBBS and after joining MBBS Course he gave up the same after attending the first semester. Even if that be so, at the time when he gave up MBBS Course and got his admission cancelled, he did not know and could not conceive that next year he will be disqualified from applying for the other course in engineering/ pharmacy, merely because he had availed admission last year and then gave up. Said Govt. Resolution was notified only in May 1999 and amended on 22nd June 1999. In such cases, if any amendment is to be made entailing a disqualification, particularly with regard to rendering the eligible candidates in a given year to be ineligible in following years in future, such decisions must be notified at least one year in advance. Even if it is taken that the petitioner had made endorsement in the previous year that he is not interested in engineering/ pharmacy course and joined medical course, it cannot be said that he is deprived of from choosing other academic pursuit for all times to

come or that he cannot revert back so as to choose engineering or pharmacy even if he is meritorious for that purpose again in the following year. Therefore, at the time when he got his admission cancelled in MBBS he may have thought that whereas he does not find himself to be fit for pursuing medical courses he may revert back to engineering/ pharmacy in the next year at the cost of losing one year and may try his fate next year. While considering such cases and while taking the view as aforesaid it is not meant that such tendency is to be encouraged and it has to be borne in mind that any candidate who chooses a particular academic pursuit must take such a decision after considering all the pros and cons, but it cannot be laid down as a principle that in no case such candidates can revise their choice and preference for other course at the cost of losing one year of their career and try their fate next year for a course which they declined earlier. His endorsement that he was not interested in engineering/ pharmacy course in the previous year cannot be pleaded against him as an estoppel or a stumbling block so as to leave him in lurch for all times to come and the authorities charged and vested with the powers to frame the policy or rules for admissions cannot be insensitive to the hard realities and problems of students. The condition which has been imposed that those who had availed admission last year cannot be considered this year for any other course despite higher merit, on the face of it runs counter to the value of merit, which we cherish the most. Therefore, the only ground on which the disqualification is incurred is the availing of the admission in the previous year. Rest of the matters that in the previous year he had made an endorsement that he was not interest in engineering/ pharmacy course are the facts relevant only to this particular case and are of no significance and consequence. When the policy decisions are to be tested, when a policy decision in the matter of rules relating admission is to be considered, validity of the same has to be decided on the touchstone of the rationale behind such a policy. Rationale which has been pleaded is that if such cases are considered, it will be detrimental to the interest of the freshers and self financing institutions. In the opinion of this court once we find that admission to these professional courses must be made on the basis of merit, a candidate in higher merit who comes forward to try his fate for some other discipline in the following year cannot be deprived opportunity of consideration so as to make room for the candidates who are less meritorious, including freshers.

between the candidates who are freshers but are of lower merit vis- a- vis the candidates of higher merit in the year before and even now. It will be a strange case and irony of fate that a candidate with lower merit who is not selected in the previous year as against the higher merit of the petitioner may be admitted this year, but the petitioner is disqualified. It is settled principle that in the interest of such professional courses and the public at large the merit cannot be allowed to be a casualty at any cost. Therefore, if any policy decision is taken and rule is framed so as to erode higher merit and sacrifice higher merit to the benefit of the candidates who are less meritorious, such policy or rule cannot be said to be reasonable or conducive to the interest of such courses. Everything can be sacrificed for merit, but merit cannot be sacrificed at the altar of anything. In any case, in the facts of the present case, the Government Resolution dated 5.5.1999 read with amendment dated 22nd June 1999 cannot be allowed to come in the way of the petitioner on the basic ground that such amendment had not been notified well in advance and this imposition of disqualification rendering eligibles to be ineligible has been notified only in May 1999 read with amendment dated 22.6.1999. By that time all the qualifying examinations have already been over and the candidates who had availed admission last year and gave it up were not aware at the time when they gave up such admissions that they will be deprived from consideration next year, even at the cost of their losing one year and now they cannot compete for such courses even in other states through entrance tests and they stand to loose yet another year because of the belated notification of the new, novel and strange disqualification for admission to professional courses in this state.

12. The difficulties which have been pointed out in affidavit in reply on behalf of respondent no.1 that there are large number of candidates who have been disqualified and that process has already been started and that no exception can be made in respect of the petitioner are their own creation because the disqualification was notified only now in May 1999 read with amendment dated 22.6.1999 and it is also acted upon from this very session. Therefore, these complications and difficulties are the direct outcome of these Govt. Resolutions of May 1999 read with amendment dated 22.6.1999, which were not notified well in advance and those candidates who were eligible and who thought themselves to be eligible till 4.5.1999 could not be suddenly rendered ineligible on 5.5.1999 or 22.6.1999 for consideration of their cases for admission for the

academic year 1999- 2000. In case any disqualification against eligibility is sought to be imposed so as to render eligible candidates to be ineligible on the ground as contained in two Govt. Resolutions as aforesaid, the career of number of meritorious candidates may be put to jeopardy and such evil consequences against students must be foreseen, visualised well in advance. In the facts of the present case, the petitioner has already given up the Course of MBBS and is now desirous of admission in engineering on the basis of his merit and if he is deprived from being considered for engineering this year despite his higher merit it would not be possible for him to prosecute any of the three professional courses and to him it will be a case of life time denial of career which he could take up on the basis of his merit. Suggestion which has been made in the affidavit in reply that the petitioner may join diploma course on the basis of the result of 10th SSCE and can avail admission to semester III degree course against 15% seats for diploma holders is not at all workable, nor the same can be said to be conducive to the interest of prosecuting the particular academic course, which the petitioner seeks to make his own on the basis of his higher merit. Keeping in view the totality of the facts, a suggestion had also been made to the AGP by the Court as to whether the respondents are prepared to restore his admission back to MBBS course, if at all they are not willing to consider him for engineering/ pharmacy course this year and in response thereto, learned AGP has stated that when the petitioner got his admission cancelled, somebody else was granted admission because the court had passed an order in a pending petition that if a seat is available the petitioner of that case may be admitted and therefore, the seat which was vacated by the petitioner last year has already been released to other candidate and therefore, his admission to MBBS Course cannot be restored. If that be so, it becomes clear that the seat which had been availed by the petitioner in the medical course has not gone waste, the same has been utilized and so also no prejudice can be said to have been caused on account of the present petitioner's giving up the MBBS Course and the right of consideration as per merit cannot be denied to him on the basis of revised criteria entailing disqualification which was never notified well in advance.

13. The net result of the discussion as aforesaid is that in the considered opinion of this Court in the facts and circumstances of this case, the petitioner cannot be deprived from being considered for admission to the course for which he applied for the academic session

1999- 2000. The disqualification in terms of Govt. Resolution dated 5.5.1999 read with amendment dat.22.6.1999 cannot be acted upon and given effect to against the petitioner and it is ordered that if any candidate having lower merit than the petitioner has been admitted in the course for which the petitioner has applied for the academic year 1999- 2000, the petitioner's case has to be considered for the same on the basis of his higher merit without disturbing the admissions which may have already been made and for that purpose, if additional seat is required to be created steps shall also be taken accordingly by the concerned authorities and in case of his admission he shall not be made to suffer any prejudice on account of late admissions and because of the time which has been consumed in this litigation.

14. This Special Civil Application is accordingly allowed and rule is made absolute in the same terms. No order as to costs. Direct service is permitted.

SPECIAL CIVIL APPLICATION No.4780 of 1999

15. The petitioner in this Special Civil Application has come with the case that he had passed the Higher Secondary Certificate Examination (10+ 2 pattern) March 1998, in Grade I (Dist.) with 78.15 % marks overall and 389 marks out of 450, i.e. 86.44 marks. in science and mathematics, which are taken into consideration for the purpose of computing merit. The petitioner was studying in B.K. Modi Pharmacy College, Rajkot for B.Pharm for the academic year 1998- 99. The petitioner paid fee, but because of sudden illness of the petitioner the petitioner could not continue his studies and submitted medical certificate to BK Modi Pharmacy College, Rajkot and thereafter at the beginning of the second term when the petitioner went to the College for paying fee, he was informed that his admission had been cancelled. This year, i.e. 1999- 2000 the petitioner applied for admission to the engineering course, but he has been denied admission on the basis of Govt. Resolution dated 5.5.1999 read with amendment dated 22.6.1999.

16. This petition was filed on 5th July 1999. Rule was issued on 6th July 1999. The return has been filed through affidavit in reply dated 20th July 1999 under the signature of Shri Y.M. Sheikh, the Joint Director of Technical Education. Learned AGP Shri Mankad has also placed reliance on the reply which has been filed in Special Civil Application No.4437 of 1999, and Govt.

Resolution dated 5.5.1999 read with amendment dated 22.6.1999. For the reasons and adjudication as have been given and made hereinabove in respect of Special Civil Application No.4439 of 1999, this petition straightway deserves to be allowed. Apart from the reasons as aforesaid it is also found from the amendment dated 22nd June 1999 that in this Resolution care has been taken with regard to the candidates who could not prosecute their studies after availing admission in any of the academic courses last year on the ground of illness. The petitioner's case that he remained ill and therefore, he could not attend to his studies and that he had also submitted medical certificate before BK Modi Pharmacy College, Rajkot as stated in para 3 of the Special Civil Application, has not been controverted. Therefore, even if Resolution dated 5.5.1999 read with amendment dated 22.6.1999 are pressed into service against the petitioner, he cannot be disqualified on the face of the contents of the amendment dated 22.6.1999.

17. The learned AGP was also granted time to take instructions as to whether the respondents were prepared to restore him the course of Pharmacy, but he has stated that respondents are not prepared for that.

18. In the facts and circumstances of the case it is directed that the petitioner's case for admission to the course for which he has applied for the academic session 1999- 2000 shall be considered according to his merit notwithstanding the fact that petitioner had availed admission in the pharmacy course last year whereat he could not prosecute studies further because of illness and for that reason he was not allowed to continue in the second term. If any candidate having lower merit than him has been admitted in the course for which he has applied for the year 1999- 2000, the petitioner's case has to be considered for the same on the basis of his higher merit without disturbing the admissions which may have already been made and for that purpose, if additional seat is required to be created, steps shall also be taken accordingly by the concerned authorities and in case of his admission, he shall not be made to suffer any prejudice on account of late admission, and because of the time which has been consumed in this litigation. This Special Civil Application is accordingly allowed and rule is made absolute in the same terms. No order as to costs. Direct service is permitted.

19. The petitioner in this case has come with the grievance that he had passed Higher Secondary Examination with 79.78% marks in science, mathematics and had applied for admission and on the basis of his merit he was given admission in the degree course of Electrical Engineering in general category for academic session 1998 - 1999 because at that time the petitioner was not able to get certificate that he belongs to SEBC or non creamy layer certificate, although he had applied for the same. Had the petitioner been given such certificate by the Mamlatdar to which he was duly entitled, last year itself he would have got admission in Computer Engineering, Information Technology or Mechanical Engineering with the benefit of being member of SEBC/ non creamy layer as he would have been considered against reserved seats on the basis of such certificates in 1998- 99. The present petitioner is already studying in degree course of Electrical Engineering at Modasa. Now the City Mamlatdar and Competent Authority has issued such a certificate in his favour and a copy of this certificate dated 10th June 1999 has been placed on record as Annexure 'B' to the petition. On the basis of this certificate, the petitioner seeks the change of branch and he wants to switch over from Electrical Engineering to any branch other than Electrical Engineering by getting him treated as a member of SEBC/ non creamy layer on the basis of certificate dated 10th June 1999.

20. Rule in this case was issued on 8th July 1999 and in response thereto an affidavit in reply dated 26th July 1999 has been filed on behalf of the respondent through the Joint Director of Technical Education. Learned AGP has pointed out that for the academic session 1998 - 99 the petitioner had himself given in writing that he had not been able to obtain certificate of being member of SEBC/ non creamy layer and therefore, his candidature may be considered in general category. That may be so because at that time he was not left with any other option. Despite his application if the concerned Mamlatdar and Competent Authority failed to issue the certificate in time, the petitioner cannot be made to suffer for it. Now that the petitioner has been able to get such a certificate which had been applied for by him during the academic session 1998- 99 as per the respondents themselves, the petitioner cannot be denied the benefit of such a certificate merely because its issuance was delayed by the concerned authority. Learned AGP has also submitted that in cases where salary income exceeds Rs.1 lakh there was some confusion at the Mamlatdar's office regarding the fact that in specific

cases the yardstick was not the income, but the status. Yet it has been stated in para 12 that if the petitioner has succeeded in getting non creamy layer certificate this year he could have made similar efforts in the previous year also and as on today under the present rules revised in May/ June 1999, his right to seek readmission stands forfeited and that he has conveniently ignored to mention the annual income though he has succeeded to get non creamy layer certificate. If his father's salary income did exceed Rs.1 lakh in view of his status as teacher, there was no reason for him not to mention the drawn salary income in the relevant column of Annexure VIII. It has also been submitted that Admission Committee was prepared to give assistance for issuance of such certificates, but the petitioner had never asked for the same, the petitioner never approached the Admission Cell upto 4.12.1998, presenting any difficulty in obtaining certificate from the Mamlatdar, Kheda and that the petitioner may not have been serious about it at that time because of the litigation which had centred around the removal of 5 % rider of marks and 27 % reservation.

21. While considering these objections it may be pointed out that even the form of application, a copy of which has been placed at page 19 along with Affidavit in Reply for the academic session 1998 - 99 shows that the annual income of the petitioner's family was Rs.89,000/-, i.e. less than Rs.1 lakh. Now for the year 1999 - 2000 if nothing has been mentioned against the column of income for academic session, it was certainly for the concerned authority to take note of these columns. In any case the fact remains that the petitioner had applied for such certificate in 1998 - 99, but the same has been made available to him on 10th June 1999. Even Resolution dated 22nd June 1999 takes care of such a contingency when the candidates are not able to get such certificates in time. Therefore, even on the face of the contents of Government Resolution dated 22nd June 1999, the petitioner cannot be deprived of the benefit of such a certificate as has been made available to him now. This fact situation cannot be lost sight of.

22. Learned AGP has pointed out the following clause with regard to change of branch :

Clause III

"Once a student is admitted at the first year level to a given branch at a given Engineering

College, no branch change is permitted unless he/she passes the first year examination and if there is any vacancy due to drop outs in Sem. III, within the 5% limit of approved intake, the Principal can give branch change as per merit order of the applicants at the same institute."

The petitioner had applied for certificate for SEBC/ non creamy layer before the Mamlatdar and he has no control over the Mamlatdar. His job was over when he applied for the same. It is for the concerned authority/ Mamlatdar to issue certificate. It is beyond the control and competence of the petitioner to force the Mamlatdar to issue certificate immediately. All said and done, even if all the objections taken in the Affidavit in Reply on the basis of which submissions have been made at the bar by the learned AGP, Shri Mankad, are assumed to be correct, the very fact that the petitioner now holds a certificate of being a member of SEBC/ non creamy layer, he cannot be deprived of the benefit of such a certificate and this is also to be taken note of that change of branch is permissible under the rules after passing of first year. The petitioner is studying in the first year. Therefore, in the facts and circumstances of this case, it is directed that as and when the petitioner completes first year course of degree in Engineering and thereafter should the petitioner apply for change of branch, the petitioner's application for such change of branch be considered in accordance with the relevant rules for that purpose with the benefit of the certificate dated 10th June 1999, which has been issued in his favour now by the competent authority/ Mamlatdar that he belongs to SEBC/ non creamy layer. In other words for the purpose of change of branch, as and when the petitioner applies, he will be treated as member of SEBC/ non creamy layer and his claim for change of branch shall be considered accordingly by the concerned authority as if he held such a certificate at the time of his admission in 1998- 99.

23. This Special Civil Application is accordingly allowed and the rule is also made absolute in the terms as aforesaid. No order as to costs. Direct service is permitted.

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